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RECOMMENDATIONS TO ENSURE THE EFFECTIVE ENJOYMENT OF ALL HUMAN RIGHTS AND IMPROVE THE COORDINATION OF THE MECHANISMS OF THE UNITED NATIONS AND REGIONAL SYSTEMS, AS WELL AS THE RELATIONSHIP BETWEEN THEM, AS APPROPRIATE

La Laguna Declaration adopted by the First International Colloquium on Human Rights, La Laguna (Tenerife), 1-4 November 1992

1. The First International Colloquium on Human Rights in La Laguna, the main theme of which was the reform of international institutions for the protection of human rights, was held in La Laguna (Tenerife) from 1 to 4 November 1992. The Colloquium was organized, in cooperation with the Spanish National Commission for UNESCO, by the University of La Laguna on the occasion of the celebration of the bicentenary of its foundation, under the auspices of UNESCO and in the presence of its General Director, Mr. Federico Mayor Zaragoza.

2. The discussions of the Colloquium led to the La Laguna Declaration, the text of which is attached. Taking into account the relevance of the Declaration for the preparations of the World Conference, the Secretariat considered it appropriate to submit it to the Regional Meeting for Latin America and the Caribbean under the item related to the recommendations to ensure the effective enjoyment of all human rights.

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The First International Colloquium on Human Rights

(La Laguna, 1-4 November 1992)

LA LAGUNA DECLARATION

1. We, the participants at the First International Colloquium on Human Rights in La Laguna, organized by La Laguna University, in Tenerife, in the Canary Islands, Spain, on the occasion of the celebration of the bicentenary of its foundation, having regard to the subject of our discussions: "The Reform of International Institutions for the Protection of Human Rights", - which was chosen so we might contribute to the preparation of the World Conference on Human Rights to be held in Vienna, in June 1993.

2. Whereas the various proposals for reform submitted at the Colloquium shall be distributed to the United Nations and other organizations concerned, for due consideration, in the form of a publication compiled by La Laguna University.

3. Whereas only the salient points and points of general relevance arising from the papers given and discussed at the Colloquium have been included herein.

PREAMBLE

4. Two hundred years ago, when La Laguna University was founded, the world, or to be more precise, the Europe of the day, was shaken to its core by the multiple repercussions of the French Revolution. Having added a universal dimension to the achievements in England and of the War of Independence in the United States, the French Declaration on the Rights of Man and the Citizen of 1789 has for a long time epitomized human rights which are the prerogative of all men and every man.

5. From its source along the banks of the Seine, the universal message of freedom has reached us through the United Nations, enriched on its journey by demands for equality embodied in the Universal Declaration of Human Rights, adopted on 10 December 1948. Next year, therefore, we will be commemorating its forty-fifth anniversary, during the United Nations World Conference on Human Rights.

6. We will be commemorating this anniversary at a time when a large part of mankind are denied the most basic human rights and live below the poverty threshold in States which are frequently overburdened by their public debt, and when violent conflicts are a daily occurrence, as is often the case in developing countries. These issues must also be highlighted in the discussions at the World Conference.

7. Even if human rights are now receiving more attention than ever before, to the extent that their respect has become a basic characteristic of international relations and foreign policy of all States, is it enough, on the eve of the third millennium, just to sit back and enjoy a world which, on the whole, is democratic and respectful of human rights? The organizers of the Colloquium in La Laguna evidently thought not, knowing full well that on the

human rights front, each victory constitutes nothing more than the base camp for future offensives. Today, we can, in fact, catch glimpses of the New Frontiers which lie before us and which we must cross together if the twenty-first century is truly to represent a World Order of Freedom and Justice for the whole of mankind, and above all for those who hitherto have been the innocent victims of the numerous political, economic and social disorders with which we are familiar.

8. For even if nowadays there are many institutions for the international protection of human rights, in practice, they can only provide the legal and judicial fact-finding machinery to ascertain the violations of human rights. They can rarely prevent such violations from occurring, can do little to alleviate the tragic consequences often suffered by the victims, and are powerless to sanction or punish the perpetrators of these violations, these criminals against the freedom of mankind. Although we must always be optimistic, since in hope lies the dynamism of mankind, can we be sure of finding the answer to truly effective human rights protection in our lifetime? Whether possible or not, there is an urgent and compelling need to try to find solutions.

9. A Czech poet once said that "no one is the last to be born or to die", yet man has a growing tendency to bury any awareness of his own limitations and to forget he is mortal. Science, aided by increasingly sophisticated technology, may, it is true, triumph over death and nurture life. Yet at the same time it makes us question the firm beliefs of the past and disconcerts us when faced with what once was the miracle of conception, which is now terminated, induced or assisted, as men or women chose, when left to take that often lonely decision. Human rights, which either reflect or interpret moral and ethical issues, must provide less ambiguous responses in this case, and not simply establish vague, general guidelines.

10. If nowadays the whole world appears to support the idea of a market economy, renowned for promoting efficiency and thereby generating wealth, some go so far as to identify political liberalism with economic liberalism, as if through the mere association of words the first could give rise to the second, and vice versa. Nevertheless such association is not without its risks, since there is a danger of "the social" and "the cultural" being marginalized or even eclipsed. Once more, the issue must be approached without ideological preconceptions, since we must realize that in human rights the beneficiary must reflect both man and woman, poor and rich, artist and writer, black and white, Jew and Arab. Only this "socialization" of human rights, which necessarily entails the personalization thereof, will enable us to move on from the theoretical side of the rights of man to confront the everyday reality of the rights of men and women.

11. Finally, we must succeed where the revolutionaries of 200 years ago failed, and realize that their rallying cry: "The State is our enemy!", is an anachronism to be relegated to the shelves of history. In practice, we should always try to remember the words of a nineteenth century French philosopher who said that, "with regard to relationship between the strong and the weak, freedom leads to oppression and laws to liberation". This is a paradoxical tribute to the Democratic State, which upholds and is often the only bastion of human rights as a consequence of the laws adopted by a freely elected

parliament; paradoxical because it is patently obvious that the power of the State has become one more stumbling-block along the road to freedom. For is it not true that the most common and most serious attacks on our freedoms, which are those which occur every day, stem from anonymous sources of power, the power wielded by simple individuals, by economic entities or by the organs of a State which has been dismembered by territorial groups, or of a State stitched back together within a supranational community? How is it then, that we do not call for the creation of a social Europe alongside an economic and political Europe, and above all for a cultural Europe, given that "culture is part of the common heritage of mankind" (UNESCO Declaration), and therefore cannot be monopolized by any individual?

I. THE PERMANENT NATURE OF THE UNIVERSAL VALUE OF HUMAN RIGHTS AND ITS CONSEQUENCES

12. The universal value of human rights, recognized and formally stated in the Universal Declaration of Human Rights of 10 December 1948, has largely been strengthened through international instruments subsequently adopted in this field, by both United Nations and regional organizations, in conventions addressing a whole category of human rights, or one specific human right. The universal nature of human rights which is nothing more than the logical consequence of the unity of the human species, can be seen to be undermined by an over-readiness to accept reservations on the numerous human rights treaties.

Proposal:

(i) New human rights treaties must categorically exclude the possibility of making reservations in respect of these treaties;

(ii) States which have made reservations should be called upon at once to withdraw them;

(iii) International organizations should hold regular meetings with States which have expressed reservations, in order to discuss the possibility of withdrawing such reservations.

13. The universal value of human rights requires the various competent institutions to interpret and apply all international norms on human rights in such a way as to ensure that constitutional principles of human rights are upheld.

Proposal: That the following constitutional principles be defined and adopted by the United Nations General Assembly as guidelines for the application and interpretation of all human rights norms.

(i) The principle of equality and the principle of non-discrimination which have already been recognized by the international community;

(ii) The principle of indivisibility of human rights, whatever the category or nature of human rights involved, since there must be no hierarchy nor priority given to one human right over another;

(iii) The principle of general opposability of human rights, whatever the source of power which may violate them: the State, public or private entities, international organizations, individuals, those with de facto power, or even with illegitimate power;

(iv) The most-favoured-individual principle, whereby where conflict exists between several applicable norms, the one which offers the individual the most favourable treatment shall always be applied, irrespective of whether it is a national, regional or universal legal norm;

(v) The principle of standstill and the unacceptability of backtracking in the field of human rights, by which the protection of human rights shall be consolidated within a State, hic et nunc, at its present level, through the application of national, regional or universal norms, and by which backtracking is no longer acceptable, so that the only direction in which States may move in the field of human rights, is forward.

14. The universal value of human rights presupposes that the international community shall draw up human rights norms embracing the universal values which have gained recognition from the whole of mankind. In addition to the right to development and the right to a healthy environment, the right of every individual to humanitarian assistance should also be included, the need for which is increasing daily, in the light of the tragic situations which exist in both Africa and Europe.

Proposal: The right to humanitarian assistance, raised to the status of a human right could be worded as follows:

> "The right to humanitarian assistance is the right of every man, woman or group of individuals to assistance when their lives and health are seriously threatened, and is a right which is both opposable to States, individuals and public and private bodies and which can be required of them.
>
> The right to humanitarian assistance, therefore, includes the right to seek and be granted such assistance, without discrimination."

15. The universal and impartial respect for human rights presupposes that special measures shall be taken in favour of minorities, specifically targeted in article 27 of the International Covenant on Civil and Political Rights, measures which go further than simply reiterating the principles of equality and non-discrimination, on the understanding that the positive role which minorities play, or could potentially play, in bilateral relations between States needs to be recognized, as it was in the Helsinki Final Act of 1 August 1975.

Proposal:

(i) The speeding up of the process by which the Council of Europe's Charter on Regional and Minority Languages will be implemented and by which a European Convention on National Minority Rights and

effective means of implementation will be established with the assistance of national ombudsmen;

(ii) The following up of the Vienna Conference between the Heads of State and Government of the 27 member States of the Council of Europe, in October 1993, by the measures taken on these States' initiative, permitting the progressive extension of the field of application of decisions affecting minorities of Non-member States, with the agreement and cooperation of the United Nations;

(iii) The consolidation and application and implementation in full of the norms and institutional measures taken concerning human rights and minority rights within the framework of the Conference on Security and Cooperation in Europe (CSCE), with specific reference to the Copenhagen, Paris, Geneva and Moscow Documents;

(iv) The drafting by UNESCO of an international instrument with regard to cultural rights, and more specifically to linguistic rights, which should be regarded as being both individual rights and rights which are exercised in the interest of the community, in so far as culture is by its very nature, part of the common heritage of mankind;

(v) The addition to the 1948 Convention on the prevention and punishment of the crime of genocide, of a definition of cultural genocide;

(iv) The drafting of a typology of minorities reflecting their needs in relation to the various categories of rights and with regard to "positive discrimination" which would lead to new-found equality between the majority and minorities within a given population both in legal terms and in practice, as well as protecting the minority's identity;

(vii) The study and application of preventive measures with regard to potential conflicts involving minorities, through early warning of possible conflicts (essentially via human rights NGOs), and through the education and the teaching of history (primarily through UNESCO).

II. MEASURES TO IMPROVE THE IMPLEMENTATION OF HUMAN RIGHTS BY ALL INTERNATIONAL INSTITUTIONS INVOLVED IN THE PROTECTION OF HUMAN RIGHTS, BEGINNING WITH THE UNITED NATIONS

A. Principles and General Measures

16. We must be fully aware of the repercussions of the fact that human rights issues (including, for example, the question of minorities) no longer fall within the scope of States' domestic affairs, as may have been the case in the past, and as defined by Article 2, paragraph 7 of the United Nations Charter. To this end, due attention has to be given to the positions adopted in the CSCE Final Documents of Geneva and Moscow.

17. The unity of human rights throughout the world should be emphasized through the drafting of a World Code on Human Rights, incorporating all existing human rights treaties. The same should be done in the case of Regional Codes on Human Rights. This is the only way to prevent differing interpretations of human rights, as is increasingly the case with decisions taken by international human rights institutions.

18. To the same end, the organs responsible for the implementation of the various treaties should be merged into a single permanent organ, that could become a World Court of Human Rights.

19. A radical review of the periodical reports system used both by the United Nations and by specialized institutions is required, since simplification is needed.

20. UNESCO has stressed that the degree to which human rights are respected is dependent on what is known about them, and the depth of knowledge is a reflection of the amount of human rights education received. Human rights education and greater awareness of human rights issues ought, therefore, to be a top priority for national education systems. For this to become a reality, the legal obligation for States party to a human rights convention to ensure understanding of the rights upheld in the convention, through teaching, education and dissemination of information, as required by the African Charter on Human Rights and People's Rights and the 1949 Geneva Humanitarian Conventions and the 1977 Protocols, must become common practice. Teaching is of paramount importance as regards the position of refugees in States where nationals could be tempted to claim the right of asylum.

B. Institutional Measures

21. The United Nations Security Council, which has found itself obliged to concern itself increasingly with the respect for human rights, should make full use of the means placed at its disposal under Article 39 of the United Nations Charter, and be fully aware of the threat which gross violations of human rights pose to international peace and security. The issue of whether the right of veto should be applied in such situations ought to be discussed.

22. The Colloquium calls for the ECOSOC stage of the human rights decision-making process to be bypassed, and instead, for the position and role within the United Nations system of the Commission on Human Rights to be strengthened.

23. Every specialized agency, institution and United Nations programme should - if it has not done already - set up a clearly identifiable administrative unit responsible for human rights issues falling within the scope of the institution, agency or programme concerned. Coordinators' meetings ought to be held at appropriate levels within the framework of the ACC, especially during situations of emergency in the field of human rights, in a particular country or region.

24. The same cause for concern lies behind the proposal to integrate both the universal and the regional branches of the various international human rights

institutions, into a coordinated system which would function like a real human rights "keyboard". The task of setting up this type of protection "system", in the spirit of "in service reform", could be entrusted, in the first instance, to a small group of prestigious, independent experts, brought together each year by UNESCO, to provide input, and then to the United Nations Commission on Human Rights, which together with all organizations concerned, would examine the issue of an international protection "system" for human rights and its "reform", as an item on the agenda of each session.

25. To give more scope to individuals and NGOs within international human rights institutions, the right to denounce human rights violations by "any individual or group of individuals or any NGO which has reliable knowledge of such violations being committed", must become more widely available. NGOs should at least have the right to intervene as an "amicus curiae" in pending cases, as is already the case in the European and American institutions for the protection of human rights.

26. International institutions for the protection of human rights must be granted the power to recommend and, where necessary to order interim measures to prevent an irreversible situation from occurring, which, before all else, would jeopardize human rights.

27. Despite the fact that parliamentary assemblies were the first to champion human rights, the role of national and international assemblies in the treaties on human rights is almost non-existent. However parliamentary bodies tend, by their very nature to take their own initiatives on human rights issues. Guidelines for "reform", in terms of the Parliamentarization of human rights, should aim to create a specialized commission on human rights within each national and international parliament, responsible not only for drafting national and international legislation in this field (in conjunction with the relevant NGOs), but also empowered to take appropriate action in the face of human rights violations, in other countries.

28. The appointment of a parliamentary ombudsman who would be completely independent of the Executive and of other powers of the State should be encouraged.

29. Henceforth, gross violations of human rights should lead to sanctions being swiftly applied against the true perpetrators. These measures which have been proposed in the light of the sickening events which are taking place at this moment, should allow the swift elaboration of general guidelines, which find their origin in the 1948 Genocide Convention:

(i) The definition of some of the most common international crimes committed against human rights, in terms of crimes against humanity and the crime of genocide;

(ii) The widespread acceptance of the principle of universal jurisdiction, for the pursuit and punishment of human rights criminals;

(iii) The creation of an International Penal Court, already referred to in 1948, which could, in the first instance, be competent as a court of appeal, and in cases where a national court is not seised.

30. In the interim, provisional measures must be taken to ensure that when gross violations of human rights are brought to the attention of the international bodies of inquiry, the perpetrators may be quickly pursued and punished in accordance with the national law of the country in which the crime was committed.

31. Every effort must be taken to ensure that the same human rights issues are not dealt with in several human rights treaties, in identical, or almost identical terms, as has happened in the case of torture, which is the subject of three specific conventions (United Nations, Council of Europe and OAS), not to mention the provisions on torture contained in general conventions on human rights. It would be beneficial, when a human rights issue of global significance is not being investigated internationally but is being discussed at regional level, for a regional treaty to be given a universal dimension so that eventually, through "delegation", it will become an international treaty open to signature by all Member States of the international community. This idea should first be put into practice in relation to the Council of Europe's Convention on Bioethics, since the principles discussed during its preparation faithfully reflect international concerns.

Participants expressed great interest in the draft legislation on organ transplants, which was presented at the Colloquium.

32. It should always be remembered that the most prominent international institution for the protection of human rights is and will probably always be the national judge. It is his job to redress situations in which human rights have been violated, by identifying the victim, paying him compensation and punishing the perpetrator which required. International protection of human rights, will therefore, always remain a second source of protection, though sometimes a more effective one than that offered by the national courts, because of its complete independence (if this is indeed the case), from the acts performed by a repressive, dictatorial State, or one which abuses its role.

33. However, in order for this process to be highly effective, the national judge must have at his disposal specific human rights legislation, which is directly applicable, and which is, indeed, applied. The principle of equality between States should lead, in this instance, to the direct application by the national judge of international human rights law within the national legal order.

The reform should therefore establish the compulsory requirement of direct application of new human rights treaties at national level and insist that States which have not incorporated other human rights treaties into their national law, should do so.

34. With the same aim of associating national human rights institutions with their international counterparts, when gross violations of human rights are detected, national parliamentary ombudsmen should have the right to bring a

case before international human rights institutions, where they see fit. This is especially important with regard to international implementation mechanisms for conventions protecting minorities or directly related issues, such as the use of minority languages.

35. Recognizing that women are largely underrepresented in international and regional institutions for the protection of human rights and that women have yet to achieve full enjoyment of their civil, political, economic and social rights, the Colloquium:

(i) Reaffirms the fundamental nature of the principles of non-discrimination and equality between the sexes;

(ii) Calls upon all international institutions concerned with the protection of human rights to undertake as a matter of urgency all necessary measures to promote full respect for the human rights of women; and

(iii) Calls for increased participation of women in all international human rights institutions, including the 1993 World Conference on Human Rights.

36. In order to increase the effectiveness of international protection of human rights the Colloquium calls for:

(i) States to become Contracting Parties to the various treaties on human rights and to recognize the optional clauses, especially in the General Conventions on human rights.

(ii) The various institutions to be allocated adequate financial resources and human capital to enable them to fulfil their obligations effectively, especially with regard to the procedure for examining complaints about violation of human rights and with regard to their role in providing aid and assistance, as is the case of the High Commissioner for Refugees.

III. MEASURES FOR REFORM CONCERNING THE VARIOUS INTERNATIONAL INSTITUTIONS OF HUMAN RIGHTS

A. Measures for reform concerning UNESCO

37. The Colloquium calls for a re-examination of UNESCO's complaints procedure in the case of the violation of human rights, as instituted in Decision 104EX/3.3 of the Executive Council in 1978. Care must be taken above all to prevent this procedure from becoming imbalanced as a result of the change in the status of members of the Council who as of 1993 will be the exclusive representatives of their Governments. The State therefore runs the risk of being seen as both judge and party.

38. The colloquium calls on UNESCO to clarify the issue of cultural rights through the preparation of appropriate norms and effective implementation measures to ensure that culture is considered to be a fundamental element of

the common heritage of mankind. Special attention should be paid to the right to language and linguistic freedom.

39. Cultural property and its protection during armed conflict which is provided for by the 1954 Hague Convention, has increasingly become a victim of conflicts, especially internal conflicts, in recent times. Since UNESCO is often prevented from intervening, on legal grounds, its work must be supplemented, or even preceded by action taken by competent non-governmental organizations. These NGOs should be organized along the same lines as the existing ones which work alongside the ICRC in the humanitarian field. "Artists without Frontiers", or "Intellectuals of the World", could be created alongside UNESCO to work in the spirit of the 1954 Hague Convention, and use this Convention's symbol.

40. Global revision of UNESCO's normative instruments in the field of human rights is needed in order to simplify them, especially in terms of their wording, so that at least some recommendations can be transformed into conventions, for example, the Recommendation on the teaching profession.

41. UNESCO is called upon to clarify the concept of human rights and associated concepts, through philosophical research.

42. UNESCO will host the 1993 World Congress on Human Rights Education, the conclusions of which ought to:

(i) Remind States of their undertaking in 1948 to distribute, circulate and teach the Universal Declaration on Human Rights;

(ii) Take appropriate measures to ensure that human rights teaching does not only take place in the Law Faculties of Universities, but is generally available throughout the education system, and that vocational training programmes in human rights are made available.

43. UNESCO should consider the possibility of creating a Committee on Ethics, which would be primarily concerned with developing the spirit of human rights in Pure and Natural Sciences.

B. Measures for reform concerning the International Labour Organisation

44. It should be noted that the ILO has for many years now been applying its own multi-dimensional machinery to the human rights issues for which it is competent.

45. The ILO is already in the process of reforming, amongst other aspects, the procedure for requesting periodical reports, with a view to making it more efficient.

46. It would appear that the ILO has obtained positive results in settling disputes, with the aid of good offices, provided for in the Organisation's Constitution. However, it is worth considering whether disputes resulting in public settlements, because of their exemplary value and the precedent they set, could not contribute to improve human rights protection.

47. In the light of the special procedure for trade-union freedom, the Colloquium supports the creation of a similar procedure concerning discrimination in the field of employment and occupation.

48. The obligation for all ILO Member States to submit the instruments adopted to the competent authorities for approval and to inform the public of them, is of great constitutional significance and should be extended to all organizations responsible for drafting and applying treaties on human rights.

C. Measures for reform concerning the World Health Organization

49. The relationship between human rights issues and health is becoming an increasingly acute problem. The Colloquium calls for the WHO to take immediate action to ensure it fulfils its obligations in this respect through:

(i) The creation of a high-level administrative unit, working closely with the Director-General and responsible for all aspects of human rights falling within the Organization's sphere of activities;

(ii) The launching, in conjunction with UNESCO, of a programme, lasting several years, for the development of specialized human rights education and the teaching of medical ethics in Faculties of Medicine and in all other institutes and schools involved in the training of staff for the medical profession (nurses, etc.).

50. The WHO is called upon to launch a worldwide awareness campaign on torture, aimed at the medical and paramedical professions, which makes much of the fact that a doctor's neutrality is no excuse for either active or passive complicity in acts of torture, which constitute blatant crimes against humanity. States should treat such complicity as a criminal offence, on the grounds of the failure to assist persons in danger, if nothing more.

51. Bioethics raise significant and urgent problems as far as human rights are concerned. The WHO should cooperate actively with the Council of Europe in the drafting of a Convention on Bioethics and to ensure that from the outset the Convention is likely to be applied worldwide. The same should apply in the case of organ transplantation, given that there is wide international consensus on this issue.

D. Measures for reform concerning the Council of Europe

52. The application of the European Convention of Rome of 4 November 1950 must result in the swift, extensive and effective protection of human rights.

53. Whatever the institutional machinery chosen for the reform of the organs of the Convention, either into a single organ or two - this machinery must have a judicial nature and render binding decisions. The individual and the State should be given equal status as a result of the solutions outlined in Protocol No. 9 (Individual right of unconditional appeal before the Court).

54. Frindly settlement and double examination of a case will be indispensible within the protection system, and will be valid whether the final decision is to merge the organs or to have two separate ones.

55. The role played at present by the Committee of Ministers under article 32, paragraph 2 of the Convention should be abolished in order to provide full judicial protection of human rights within the framework of the institutional machinery of Europe.

56. The reform should make provision for control procedures for the application of decisions taken by the organ or organs of the Convention, so as to avoid the creation of a "two-speed Europe" for human rights.

57. The European Social Charter is a useful complement to the protection of human rights provided by the Council of Europe. The efforts recently made to revitalize it and above all to facilitate the implementation of the new mechanism of collective complaint, deserves support.

E. Measures for reform concerning the European Communities

58. The Colloquium notes that human rights have recently been given a central role and constitutional recognition in the Maastricht Treaty. Community law in the field of human rights is advancing rapidly, both through the case law of the Court of Justice and the Court of First Instance and through decisions, such as the European Parliament's Declaration and the European Charter on Children's Rights. One particular issue, however, has been left pending for years - whether or not the European Communities as a whole should accede to the European Convention on Human Rights. In the light of the developments taking place, the only recommendation the Colloquium would make is to emphasize the need to resolve the issue of the relationship between the Community legal order and the European Convention, so that citizens of the Community may soon enjoy an indisputable, clear and accurate legal order with regard to human rights.

59. The European Communities ought to follow up and accelerate the drawing up of a compulsory legal instrument on social rights which are alone capable of giving a veritable human dimension to European unification.

60. All the Community Institutions should recognize the political, diplomatic and economic repercussions of the link which must be clearly established - and subsequently respected - between human rights and financial and technical assistance.

F. Measures for reform concerning the Conference on Security and Cooperation in Europe (CSCE)

61. The advanced stage of development of the CSCE in the field of human rights is a remarkable phenomenon and one which deserves support, provided that adequate measures are taken to avoid duplication of effort, standards and organs.

62. Amongst the European organizations which work in the field of human rights, the CSCE has special responsibility for the protection of minorities. The CSCE should extend the means available to it in this field.

63. The recently created CSCE Parliamentary Conference should tackle human rights issues in coordination with other European assemblies, especially the European Parliament.

G. Measures for reform concerning the parliamentary dimensions of human rights in Europe

64. The Colloquium made reference to the important phenomenon of the "parliamentarization" of human rights in Europe, especially in recent years. This phenomenon is all the more noteworthy in the parliaments of certain old and newly democratic states in Europe, where human rights fall within the normative competence of these same parliaments. In addition, reference was made to the role played by certain national parliaments due to their committees on petitions and committees of inquiry, as well as in their appointment of certain "Ombudsmen".

65. The phenomenon of parliamentarization of human rights may also be seen at a trans-European level, within the assemblies created by regional international organizations, such as the Council of Europe, the Western European Union, the North Atlantic Treaty Organization and the Conference on Security and Cooperation in Europe. In this connection, special attention should be paid to the European Parliament, not simply because it is elected by direct universal suffrage, but also due to its growing role in human rights activities, both at Community and international level.

66. Despite the importance of this phenomenon, which is naturally warmly welcomed, there are several shortcomings which need to be amended. At parlimentary level, two different situations can be discerned: the absence of a parliamentary committee for human rights, or the fragmentary nature of the many organs which deal with human rights issues.

67. At trans-European parliamentary level, including within the European Parliament, the use of the "resolution" for the denunciation of human rights violations often makes it difficult to assess the true facts, and subsequently these resolutions have less of an impact on public opinion. In addition, when many parliamentary institutions adopt many resolutions on current human rights issues, there is a danger that in the long run this will lead to the "trivialization" of these resolutions, especially when there is no guarantee that they will be followed up.

68. On the basis of these observations, the Colloquium supports:

(i) The creation of parliamentary committees for human rights in those parliaments where they do not yet exist;

(ii) The reunification, or at least closer coordination of the activities of the various committees dealing with human rights within a single parliament;

(iii) A more accurate grasp of the facts contained in a parliamentary resolution on human rights, essentially through exchange of information between parliaments and through closer cooperation with NGOs;

(iv) Guaranteed follow-up of parliamentary resolutions adopted in the field of human rights, especially in urgent personal situations;

(v) Extension of inter-parliamentary cooperation in the field of human rights, through, for example the Joint Conference between the European Parliament and national parliaments, established by the Treaty on European Union (Maastricht).

69. Finally, the Colloquium expresses its concern at the fact that not only national parliaments, but also international parliaments are playing a completely peripheral role in the preparation of the Second World Conference on Human Rights (Vienna, 14-25 June 1993). This is why there is urgent need for these parliaments to be able to express their opinions on the forthcoming Vienna Conference, through the adoption of a Declaration drawn up by the European Parliament, in view of its vast experience in this field, containing practical suggestions for the future. Therefore, because time is short, the Colloquium is calling upon the European Parliament, which due to its organizational structure and working methods, is in a position to call a European, national and trans-European parliamentary meeting at short notice, to discuss and approve such a Declaration.

H. Measures for Reform concerning the Organization of American States (OAS)

70. With regard to human rights norms, the American continent enjoys an apparently comprehensive network of treaties for the protection of human rights, including, notably, the American Convention on Human Rights, together with the additional San Salvador Protocol on economic, social and cultural rights, and the Protocol on the abolition of the death penalty. A first important step would be for every OAS Member State without any exception to ratify these treaties.

71. All these treaties should be applied in their entirety, under the supervision of the organs of control of the Convention, that is to say, the American Commission and the American Court on Human Rights. With regard to the Court, there should be greater participation than was the case in the past, in the implementation of the Convention, since it should be responsible for all the major problems of interpretation and application of the Convention, which may arise.

72. The issue of the legitimacy of a State party to a general human rights treaty, such as the American Convention on Human Rights, denouncing that treaty in order to shirk the obligations it had assumed, especially those towards its own citizens, deserves urgent attention. It is clear that such a denunciation at best goes against the spirit of human rights, if not against the substance of the mandatory rules of international law (jus cogens).

I. Measures for Reform concerning the Organization of African Unity (OAU)

73. All OAU Member states should promptly ratify the African Charter of Human Rights and People's Rights, which although only recently implemented, has already led to the consolidation of democratic regimes on the African continent.

74. To the same end, the African Commission for Human Rights and People's Rights should continue to adopt additional resolutions to the specific provisions of the African Charter which are, in places, too general.

75. The mechanism for the implementation of the African Charter needs to be supplemented by the creation of an African Human Rights Court.

76. The African Commission for Human Rights and People's Rights should undertake studies and provide conclusions and recommendations concerning the situation in African countries which are experiencing large population movements as the result of local warfare.

77. Given the difficult situation in which Africa finds itself at present, regional and international human rights institutions should do all within their power to provide aid and assistance to the African Human Rights Commission, in the context of broad cooperation between the member States of the international community.

78. In broad terms, all appropriate means of aid and assistance must be employed to contribute to the consolidation of African democracies, since their existence and proper functioning is an essential prerequisite for the full guarantee of the human rights set out in the African Charter.

J. Measures for reform concerning the Arab world

79. The Colloquium recognizes the lack of specific international institutions for the protection of human rights in the Arab world, and believes that this situation is unlikely to change in the near future. One may wonder whether at least a partial solution of this question cannot be seen in the decision of several Arab States to become Contracting Parties to the African Charter on Human Rights and People's Rights.

80. Measures undertaken should never lose sight of the following:

(i) The strengthening of national human rights law in Arab States, through the incorporation of international human rights treaties into national law;

(ii) The creation of human rights leagues or associations at national level, which should work freely within the framework of national law;

(iii) Progress in human rights education throughout society and not simply at university level.

K. Measures for reform concerning Asia and the Pacific

81. The Colloquium recognizes that there are no specific, international human rights institutions for Asia and the Pacific region. It seems unlikely that this situation will change in the near future, at least as far as the region as a whole is concerned, due to its diversity.

82. It should be asked whether the future of regionalism in the human rights field does not lie in a subregional approach and in the creation of common institutions concerned with such issues as information and education with regard to human rights.

83. Pending the birth of Asian regionalism in the field of human rights, all States should ratify the human rights treaties, notably the two Covenants and the Optional Protocol to the Covenant on civil and political rights, and should ensure that energy is devoted to the development and strengthening of national human rights institutions. To this end, the Colloquium stresses the need for:

(i) A judicial and a non-judicial approach to human rights;

(ii) Complementarity between national and international human rights institutions, and between national and international law in this field;

(iii) The individual always to be given due consideration, as a fundamental element of the community;

(iv) The link which exists between human rights and the obligations of the individual and indeed, the State (as seen in the Draft Declaration drawn up by "LAWASIA"), so that all future definitions of human rights are accompanied by the corresponding definition of human duties.

L. Measures for reform of human rights protection provided during armed conflict and other situations of public emergency

84. The Colloquium recognizes that the most serious violations of human rights take place during armed conflicts or during other situations of public emergency. It is of paramount importance that parties to an armed conflict respect international humanitarian law and that States take seriously their duty to ensure the respect of this law as required under common article 1 of the 1949 Geneva Conventions.

85. Although human rights law and international humanitarian law stem from different treaties, both the hard core of human rights law and a large part of international humanitarian law clearly form an integral part of international customary law and are therefore the "sine qua non" of a civilized society. Human rights are indivisible not only in peacetime but also in times of armed conflict and their protection and observation at all time is essential for the survival of mankind.

86. In public emergencies which do not amount to armed conflicts, the World Conference should recognize the fact that a number of norms of international law remain applicable. In addition to the non-derogable rights that are identified in the United Nations Civil and Political Rights Covenant and in regional human rights treaties, the Conference should take into account international case law and practice that have evolved in this field and which do not allow the individual State to be final arbitrator of its actions in times of public emergency. Particular note should be taken of the need for

the respect of basic judicial guarantees which are essential in order to preserve in practice non-derogable rights. This has been reaffirmed in the Declaration of the Body of Principles for the Treatment of All Detained Persons adopted by the United Nations General Assembly in December 1989 and has been stressed by several special rapporteurs to the United Nations Human Rights Commission.

Note should also be taken of the Tokyo Declaration on minimum humanitarian standards, which indicates the norms that must remain applicable during a public state of emergency.

87. The Colloquium recommends that the Conference address the following legal and pragmatic needs which have arisen in practice:

(i) Provide the objective criteria needed for impartial determination as to when a state of public emergency, (other than armed conflict) exists, in order to prevent illegitimate derogation of human rights;

(ii) Prescribe binding rules governing conduct at times of internal strife not amounting to armed conflict, under common article 3 of the 1949 Geneva Conventions, or the 1977 Second Protocol;

(iii) Establish modes of interaction between different mechanisms generated by human rights conventions and international humanitarian law;

(iv) Inclusion in all human rights treaties of a provision of a time limit beyond which derogations will cease to be applicable, unless renewed under the conditions laid down by the treaties.

CONCLUSION: MAIN PROPOSALS

88. So that the greatest benefit may be derived from the considerable knowledge gained through the work of the First International Colloquium in La Laguna, the Colloquium proposes:

(i) The creation, with an appropriate status within the University of La Laguna, of a Tri-Continental Institute or Centre on Parliamentary Democracy and Human Rights (Europe, Africa and America). The Choice of La Laguna as the home to such an institute stems from the fact that the Canary Islands, from a geographical standpoint, are part of Africa; are European in terms of population and culture, and may also be considered as being American due to their historical role and their vocation. The parliamentary and governmental authorities of both the Canaries and of Spain would certainly support such a proposal, as would UNESCO, the European Communities and other European, African, American and international organizations;

(ii) To host a Colloquium on "the Reform of International Institutions for the Protection of Human Rights" in La Laguna every two years (the first to take place the year after the World Conference on

Human Rights in 1993), in order to provide regular appraisal of the application of measures of reform already taken and to propose appropriate new measures of reform, and thus make La Laguna University a "capital of human rights reform".

These proposals were adopted in La Laguna on 4 November 1992, on the occasion of the 42nd anniversary of the signing of the European Convention on Human Rights.